

on the basis of material on record to show whether the land in question measuring 37 Kanals 8 Marlas has been reserved by way of a scheme or is otherwise being utilized or used for common purposes so as to fall within the ambit of Section 42-A of the 1948 Act. This aspect is to be considered by the appellate authority i.e. the Commissioner under the 1961 Act.

(6) In the circumstances, the petitioner having an alternative remedy of preferring an appeal against the order dated 8th May, 2008 (Annexure-P.10), the writ petition is premature. Accordingly, the writ petition is dismissed being premature. However, the petitioner would be at liberty to file an appeal before the Commissioner and in case the same is filed within 15 days from the receipt of copy of this order, the same shall not be dismissed on the ground that it is barred by time. The learned Commissioner shall also consider the application for stay, if any, filed by the petitioner.

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**R.N.R.**

*Before Permod Kohli, J.*

**GURVEER SINGH AND ANOTHER,—Petitioner**

**versus**

**STATE OF PUNJAB AND OTHERS,—Respondents**

**C.W.P. No. 2564 of 2008**

2nd February, 2010

*Constitution of India, 1950—Arts. 14, 16 and 226—Punjab Police Rules, 1934—Rl.12.15—Appointment to post of Constables—DGP granting relaxation without recording any reason—Rule 12.15 only permits relaxation of upper age limit, height and chest that too in specified cases under valid circumstances—Rule does not permit relaxation in educational qualification—No reason to relax minimum educational qualification of respondent No. 5—Selection/Appointment of respondent No. 5 is totally unjustified and in contravention of Rl. 12.15 and advertisement notice—Violative of Articles 14 and 16 of Constitution—Relaxation granted for height*

*and chest in case of respondent No. 4 without recording any reasons—Grant of relaxation is not at choice, whims and discretion of authorities nor rules permit so—Relaxation is permissible but it has to be within the precincts of law—Relaxation has to be in accordance with mandate of rule which inter alia provides for recording of reasons—Recording of reasons is soul of validity of action—Granting relaxation without any valid reason with sole object of conferring unbenefit at cost of other eligible candidates is impermissible under law.*

*Held.* that the office of Director General of Police has simply granted relaxation and no reasons whatsoever have been recorded. It is also revealed that out of 65 appointees, relaxation has been accorded in as many as 37 cases including respondents No. 4 and 5. Rule 12.15 which *inter alia* lays down the eligibility criterion for selection to the post of Constable, though, provides relaxations but in respect to the upper age limit, height and chest only that too by recording circumstances for such relaxation, meaning thereby the reasons to grant relaxation. From the scanning of the entire record it appears that no reason muchless a valid reason has been recorded. Rule 12.15 only permits relaxation of upper age limit, height and chest that too in specified cases under valid circumstances. This rule does not permit relaxation in the educational qualification. Nothing is revealed how the minimum educational qualification of respondent No. 5 has been relaxed. The advertisement clearly prescribes 10+2 as the minimum qualification. Hence, there is no question of grant of any relaxation in minimum prescribed qualification. The selection/appointment of respondent No. 5 is totally unjustified and is in contravention of Rule 12.15 and advertisement notice and is violative of Articles 14 and 16 of the Constitution of India. Even though the relaxation has been granted for height and chest both in case of respondent No. 4 but no reasons are recorded in the order of granting relaxation. Grant of relaxation is not at the choice, whims and discretion of the authorities nor the rules permit so.

(Paras 13 & 14)

*Further held*, that the relaxation is permissible but it has to be within the precincts of the law. A specific rule is in existence governing the relaxation. The relaxation has to be in accordance with the mandate of the rule which *inter alia* provides for recording of reasons. No reasons have been recorded. Recording of reasons is the soul of the validity of action as it tends to demonstrate the necessity of relaxation in particular case or in general, if, so required. Granting relaxation without any valid reason with the sole object of conferring benefit to few at the cost of those who are otherwise eligible is impermissible under law.

(Para 15)

A.D.S. Jattana, Advocate for the petitioners.

B.S. Chahal, D.A.G., Punjab.

Gaurav Sharma, Advocate for respondent No. 4.

**PERMOD KOHLI, J (ORAL)**

(1) Selection of respondents No. 4 and 5 to the post of constable in relaxation of the prescribed eligibility/qualification has been challenged in this writ petition. The petitioners and private respondents applied for selection to the post of constable (sports), Punjab Armed Police (PAP) in response to the advertisement issued by the Chairman, Central Recruitment Board (Player), Punjab Police, Jalandhar Cantt. published in newspaper in its issue dated 29th July, 2007. Through this advertisement one temporary post of Asstt. Sub Inspector and 65 posts of constables (Sports) were advertised. The minimum educational qualification prescribed in the advertisement for the post of constable is 10+2 or equivalent along with Matriculation with Punjabi from the recognized Board/University. The age limit for the post was notified between 18 to 25 years from the date of initiation of proceedings with 5 years relaxation for the candidates belonging to Scheduled Castes and Scheduled Tribes categories in accordance with the State Government instructions/rules. The advertisement also prescribed the physical standards like height and chest in the following manner :—

For Boys :—

Height : 5'×7"

Chest : 33"×34½"

For Girls :—

Height : 5'×3"

Weight : 50 Kgs.

(2) Since the posts were constables (sports) the sports achievements for constables have been specified as under :—

“CONSTABLE :

1. The candidate should have represented national level from his State/All India Inter University ;
2. Preference will be given to those candidates who are still representing India or obtained/won medal/s in national and All India Inter University level.

(3) The advertisement has further prescribed the mode of selection of the candidates in para 7 thereof, which reads as under :—

“MODE OF SELECTION :

- (i) Firstly trial of concerned event of the player will be conducted and if the player is not found fit then the further proceeding of selection will not be conducted. Thereafter, interview will be conducted of the selected candidates. The help of any expert person can be taken by the Chairman of the Board at the time of trial and the interview concerning to that event.
- (ii) The attested copies of the certificate of the selected candidates will be checked after the trial.
- (iii) Physical test will be conducted of the successful candidates after scrutiny the attested certificates ;
- (iv) The selection for the appointment will be conducted on the basis of last achievements, present position/performance and the performances shown in the trial taken by the Board of the player. The selection will not be made on one basis.”

(4) The petitioners claim that they are from the sports discipline of Boxing and were fully qualified as regards their qualification, age and physical standards etc. Both the petitioners were called for trials regarding their physical measurements and they were found possessing the requisite physical standards. They were called for interview,—*vide* letter dated 18th December, 2007, copies of the same have been placed on record as Annexures P-10 and P-11 respectively. The petitioners appeared before the Committee along with their documents. It is claimed that they performed well in the interview.

(5) Petitioners have also referred the game/sports of respondents No. 4 and 5. It is stated that both of them belong to Boxing discipline. Respondent No. 5 is also from the same village as that of the petitioner No. 1. It is alleged that respondent No. 5 was only 10th passed, whereas respondent No. 4 had less height than the required 5'×7" and despite deficient in qualification and physical standards, respondents No. 4 and 5 have been selected in contravention of the laid down norms. In the result declared on 13th February, 2008 (Annexure P-12) the petitioners have not been shown amongst the selectees, whereas, respondents No. 4 and 5 find their place in the select list at Sr. Nos. 20 and 21 respectively. Having been denied the selection/appointment to the post of constables (sports) the petitioners have filed this petition seeking setting aside of selection of respondents No. 4 and 5 with a further direction to consider the petitioners for the post and select them on the basis of their eligibility and merit.

(6) Respondents No. 1 to 3 i.e. the official respondents have filed their detailed reply admitting the candidature of the petitioners and selection of respondents No. 4 and 5 on the post in question. It is stated that the selection was made by a Board constituted for the purpose. The Board has assessed the performance of each candidate in a fair and transparent manner and made selection on merits taking into consideration the sports achievements, performance in interview and trial. The details of the marks awarded to the petitioners and private respondents have been given in para 8 of the reply in the following manner :—

#### MARKS

Sr. No.	Name	Achievements (Max. 20)	Trials (Max. 10)	Interview (Max. 10)	Total (Max. 10)
1	Gurveer Singh (Petitioner No. 1)	05	27	06	38
2	Kuldeep Singh (Petitioner No. 2)	05	26	06	37
3	Kulwinder Singh (Respondent No. 4)	10	32	08	50
4	Parminder Singh (Respondent No. 5)	20	25	05	50

(7) These respondents have, however, specifically admitted in para 9 of the reply that even though the minimum educational qualification for the post of constable (sports) was 10+2 and the height as 5'×7", however, respondent No. 4 measured his height as 5'×5" and the educational qualification of respondent No. 5 was 10th standard. It is, however, stated that both these candidates were given a chance to compete at the field trial, since their previous sports achievements were good and both of them appeared to be promising candidates to the Board. They performed reasonably well at field trials. On finding that they have sufficient aggregate marks, their names were recommended to the Director General of Police, Punjab,—*vide* Memo No. 3507/PAC, dated 17th January, 2008 with suggestion for necessary relaxation in height in respect of respondent No. 4 and educational qualification in respect of respondent No. 5. The Director General of Police, Punjab,—*vide* his office TPM No. 2133-34/E-I (iv) dated 6th February, 2008 approved the enlistment of respondents No. 4 and 5 by granting proposed relaxation allegedly under Punjab Police Rule 12.15 in respect of the aforesaid respondents as also in case of some other candidates. Respondents have also disclosed the sports performance of the petitioners as well of the private respondents in para 11 of the reply to demonstrate that the private respondents had better sports achievements than the petitioners.

(8) Even though, the petitioners have filed their replication but they have only reiterated the contentions raised in the writ petition and nothing substantial in rebuttal has come in the replication.

(9) Respondents have placed on record copy of order No. 3 of 2007 relating to recruitment of constables (sports) in Punjab Police as Annexure R-1. The composition of the Recruitment Board for recruitment of constables is given. The Board is headed by an officer of the rank of Inspector General of Police as Chairman, Deputy Inspector General (Admn.), Member, Commandant 7th Battalion, Punjab Armed Police, Jalandhar Cantt., Member, Director, Sports, Punjab Member and one police employee, recipient of Arjun Award in the field of particular sports. The physical standards prescribed are the same as notified in the advertisement, so is

the position in respect to the educational qualification and age as also the sports achievements. Rule 12.15 of the Punjab Police Rules deals with the recruits age and physical standards etc. and reads as under :---

“12.15. Recruits Age and physical standards (1)---Recruits shall be not more than 25, or less than 18 years of age. (For Hry. Recruits shall not be less than 18 years and not more than 27 years of age-Notification dated 14th March, 1984) at the time of enrolment, and shall have a minimum height of 5'×7" and normal chest measurement of 33", with expansion of 1-1/2 inches. These physical standards shall not be relaxed without the general or special sanction of the Deputy Inspector General. A general reduction of the standard may be allowed by Deputy Inspectors General in the case of special castes or classes, which provide desirable recruits, but whose general height does not come upto that prescribed. In such cases a standard of chest measurement and general physique shall be fixed, which will permit the enlistment of strong and well-proportioned youth of the class in question. The Inspector General may in special circumstances to be recorded in writing, relax the upper age limit and the physical standards in the case of recruits.”

(10) The aforesaid rule prescribes the age limit, the physical standards i.e. height and chest measurements. The advertisement issued by the respondents contained the same age limit, physical standards as prescribed under the above rule. The aforesaid rule further prohibits relaxation of physical standards without the general or special sanction of the DIG. Such relaxation is permissible in case of special class or classes which provides desirable recruits. The power is also conferred upon the Inspector General to relax the upper age limit and the physical standards in case of recruits under special circumstances to be recorded in writing. The official respondents in their reply have also relied upon this very rule (12.15) to claim a relaxation in case of respondents No. 4 and 5. It is pertinent to note that rule does not provide for relaxation in qualification and minimum age.

(11) With a view to find out the reasons for relaxation the record was summoned.

(12) Respondents have produced the record. It appears that while making recommendations to the competent authority merit lists of selected candidates on sports basis were prepared separately for each discipline of sports. In so far the discipline of Boxing is concerned, Kulwinder Singh, respondent No. 4 was found deficient in height by 1.75 inches and in chest by 1×1 inch, whereas Parminder Singh, respondent No. 5 was found deficient in educational qualification. In the column of remarks no remarks are given. The communication dated 17th January, 2008 from the Chairman of the Central Recruitment Board (sports persons), Inspector General of Police, PAP, Jalandhar to the Director General of Police, Punjab, Chandigarh reveals that some candidates were less educationally qualified, over age, under age, less in measurements of height and chest and some having not passed Punjabi were recommended for relaxation/exemption and the list enclosed along with such communication only specified the deficiencies but no reasons are recorded seeking relaxation. The respondents have also placed on record copy of the final order passed on behalf of the Director General of Police, Punjab granting relaxation as Annexure R-3.

(13) From the perusal of the aforesaid order it appears that the office of Director General of Police has simply granted relaxation and no reasons whatsoever have been recorded. It is also revealed that out of 65 appointees, relaxation has been accorded in as many as 37 cases including respondents No. 4 and 5. Rule 12.15 which *inter alia* lays down the eligibility criterion for selection to the post of constable, though, provides relaxations but in respect to the upper age limit, height and chest only that too by recording circumstances for such relaxation, meaning thereby the reasons to grant relaxation. In the present case, from the scanning of the entire record it appears that no reason much less a valid reason has been recorded. It is only in reply filed by respondents that some reasons are sought to be introduced. As noticed above the relaxation has been granted in as many as 37 cases i.e. More than 50% candidates have been selected by granting relaxation, whereas the eligible candidates



were available in abundance. From the record it has also been revealed that there were 1950 applications. At the first place how the application forms of the respondent No. 5, who was not educationally qualified, has been entertained. Nothing has been mentioned in the reply nor is available in the record. Rule 12.15 only permits relaxation of upper age limit, height and chest that too in specified cases under valid circumstances. This rule does not permit relaxation in the educational qualification. Nothing is revealed how the minimum educational qualification of respondent No. 5 has been relaxed. The advertisement clearly prescribes 10+2 as the minimum qualification. Hence, there is no question of grant of any relaxation in minimum prescribed qualification. The selection/appointment of respondent No. 5 is totally unjustified and is in contravention of Rule 12.15 and advertisement notice and is violative of Articles 14 and 16 of the Constitution of India.

(14) Even though the relaxation has been granted for height and chest both in case of respondents No. 4 but no reasons are recorded in the order of granting relaxation. Grant of relaxation is not at the choice, whims and discretion of the authorities nor the rules permit so. Hon'ble Supreme Court in following cases has held as under :—

**1. Ram Sakhi Devi versus State of U.P. (1)**

“4. The post of Headmaster under Section 16-E(2) has to be filled in by promotion or by direct recruitment after due publication by the Committee. The proviso to sub-section (3) should not be used as a routine for exempting the persons who were not possessed of the requisite qualifications as a short route to appoint unqualified persons to the post of Headmaster. It should be used sparingly and not as a routine, with all reasons for such an appointment which would be subject to judicial review.”

**2. Dr. Ami Lal Bhat versus State of Rajasthan (2)**

“The power of relaxation is required to be exercised in public interest in a given case ; as for example, if other suitable candidates are not available for the post, and the only candidate who is suitable

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(1) (1997) 4 S.C.C. 379

(2) (1997) 6 S.C.C. 614

has crossed the maximum age-limit ; or to mitigate hardship in a given case. Such a relaxation in special circumstances of a given case is to be exercised by the administration after referring that case to the Rajasthan Public Service Commission. There cannot be any wholesale relaxation because the advertisement is delayed or because the vacancy occurred earlier especially when there is no allegation of any *mala fides* in connection with any delay in issuing an advertisement. This kind of power of wholesale relaxation would make for total uncertainty in determining the maximum age of a candidate. It might be unfair to a large number of candidates who might be similarly situated, but who may not apply, thinking that they are age-barred. We fail to see how the power of relaxation can be exercised in the manner contended.”

**3. Kendriya Vidyalaya Sangathan versus Sajal Kumar Roy (3).**

“Age limit is prescribed for appointment to the general category of employees. The upper age limit for appointment to the post of LDC is 25 years. The advertisement also says so. The Rules, as noticed hereinbefore, are in two parts. The first part talks about the age limit. The second part provides for relaxation. Such relaxation can be granted for the purpose specified, i.e., in favour of those who answered the descriptions stated therein. Relaxation of age limit even in relation to Scheduled Castes and Scheduled Tribes candidates or the Retrenched Central Government employees, including the defence personnel, is, however, not automatic. The appointing authorities are required to apply their mind while exercising their discretionary jurisdiction to relax the age limits. Discretion of the authorities is required to be exercised only for deserving candidates and upon recommendations of the Appointing Committee/Selection Committee. The requirements to comply with the rules, it is trite, were required to be complied with fairly and reasonably.

They were bound by the rules. The discretionary jurisdiction could be exercised for relaxation of age provided for in the rules and within the four corners thereof. As Respondents do not come within the purview of the exception contained in Article 45 of the Education Code, in our opinion, the Tribunal and consequently, the High Court committed a manifest error in issuing the aforementioned directions.”

#### 4. *State of Orissa versus Sukanti Mohapatra* (4)

“Rule 14 merely permits relaxation of any of the provisions of the Rules in public interest but not the total shelving of the Rules. The orders do not say which rule or rules the Government considered necessary and expedient in public interest to relax. What has been done under the impugned orders is to regularise the illegal entry into service as if the Rules were not in existence. Besides the reasons for so doing are not set out nor is it clear how such regularisation can sub-serve public interest. Rule 14 has to be strictly constructed and proper foundation must be laid for the exercise of power under that rule. The Rules have a limited role to play, namely, to regulate the method of recruitment, and Rule 14 enables the Government to relax any of the requirements of the Rules pertaining to recruitment. The language of Rule 14 in the context of the objective of the Rules does not permit total suspension of the Rules and recruitment dehors the Rules. In the present case the recruitments had taken place years back in total disregard of the Rules and now what is sought to be done is to regularise the illegal entry in exercise of power under Rule 14. Rule 14, we are afraid, does not confer such a blanket power ; its scope is limited to relaxing any rule, e.g., eligibility criteria, or the like, but it cannot be understood to empower Government to throw the Rules overboard. If the rule is so constructed it may not stand the test of Article 14 of the Constitution. The provision to Rule 13 can come into play in the matter of fixation of seniority between

candidates who have successfully cleared the examination and a candidate who cleared the examination after availing of the benefit of relaxation. We are, therefore, of the opinion that the Tribunal committed no error in understanding the purport of Rule 14.”

(15) Thus, it is settled proposition that the relaxation is permissible but it has to be within the presincts of the law. A specific rule is in existence governing the relaxation. The relaxation has to be in accordance with the mandate of the rule which *inter alia* provides for recording of reasons. No reasons have been recorded. Recording of reasons is the soul of the validity of action as it tends to demonstrate the necessity of relaxation in particular case or in general, if, so required. Granting relaxation without any valid reason with the sole object of conferring benefit to few at the cost of those who are otherwise eligible is impermissible under law.

(16) From the record it appears that a number of candidates have been granted relaxation dehors the rules but all such beneficiaries are not parties before this Court. While the case of respondents No. 4 and 5 will be dealt with in accordance with the directions herein above, all such beneficiaries of relaxation will be also dealt with in the light of the observations made herein this judgment. The competent authority will issue notice to all such candidates, who are beneficiaries of illegal relaxation and after providing them opportunity of being heard, they shall be dealt with in the same manner as respondents No. 4 and 5.

(17) In view of the above circumstances, the selection of respondents No. 4 and 5 is not sustainable in law and is liable to be quashed. I order accordingly. This petition is allowed. The respondents will consider the next meritorious candidates in the order of merit to be appointed against the resultant vacancies on account of quashment of selection of respondents No. 4 and 5 and pass the appropriate order within a period of two months.